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Response to McMahan's Paper

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What Jeff McMahan means to provide in this essay is a careful and precise account of individual responsibility in time of war. What he actually provides, I think, is a careful and precise account of what individual responsibility in war would be like if war were a peacetime activity. I am not going to dispute the account. Some of it is a little too fine for my head; I don't have any clear intuition about the case of the Implacable Pursuer (except for the intuition that it isn't a likely case in the world that I know). But I recognize McMahan's overall account as a perceptive description of the way we ordinarily, conventionally, I would even say traditionally, assign moral responsibility. I don't deny its perceptiveness; I only want to deny its relevance to the circumstances of war. This is, after all, one of the reasons that we hate war: It is a coercively collectivizing enterprise; a tyrannical enterprise; it overrides individuality, and it makes the kind of attention that we would like to pay to each person's moral standing impossible; it is universally oppressive. Just war theory is adapted to the moral reality of war, which means that "justice" in the theory lives, so to speak, under a cloud.

Now, McMahan is against this "traditional" view of war's reality and therefore he is opposed, at least initially, to any adaptation to it. He comes to adaptation at the end, and when he does, it seems to me, he more or less adopts my own view about these matters. Our disagreement, at the end, may be only terminological. But let's see what we can make of his initial opposition to the 'traditional' account. The test is this: Can he apply the individualizing judgments he is committed to make to the actual circumstances of war? Suppose that he is right about responsibility: What follows? His paper is a bit stingy with applications – not unlike a lot of philosophical work. The fictional narrative about the Implacable Pursuer is developed at much greater length than any real-life example. But there is one historical example in the paper, and I am going to seize on it. I will also provide an example of my own, to deal with McMahan's lacunae.

McMahan argues on page 35 that in the first Gulf War, there was an important moral distinction to be made between the Iraqi Republican Guard and the regular army. The Guard was an elite volunteer unit, loyal to the regime, and so responsible for the attack on Kuwait "to a higher degree" than the conscripts of the regular army. And so the American-led coalition was "entitled to inflict as much harm on the Republican Guard as was

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necessary to eliminate the threat" it posed and, at the same time, coalition soldiers were also required "to accept greater risks to themselves to reduce the harm inflicted on [the] conscripts." Note first how far McMahan is in this example from his commitment to individual responsibility. Surely there were some members of the Guard for whom service was an offer they could not refuse and who were privately opposed to the invasion of Kuwait, while there must have been conscripts who were enthusiastic about both the regime and the invasion. So McMahan does in fact recognize the collectivizing impact of war, but he limits this to the divisional level, whereas "traditional" theorists accept collectivization at the level of the army as a whole. But is this limited recognition plausible? Imagine a battle in which American forces are about to turn the flank of a Republican Guard division, and some regular army units are rushed into place to protect the flank. It isn't an actual case, but it could easily have happened; it isn't a weird hypothetical. So, how would McMahan explain to the American soldiers that they have to use minimal force and accept greater risks over there, even while they are fighting as harshly as is "necessary" over here? I would like to listen to his talk to the soldiers.

I don't believe that he could make the case. What he regards as significant differences of responsibility between the Guard and the regular army just aren't going to make a difference on the battlefield – because of what battlefields are like. I expect that they also won't make a difference with regard to the treatment of captured soldiers from the Guard and the regular army. Both groups will – so, at least, I would hope – be accorded "benevolent quarantine for the duration." What we might call the surrender convention is a reciprocal agreement that is obviously of benefit to both sides. But it also fits nicely with the "traditional" argument about the moral equality of soldiers.

Another historical example, my own this time, will illuminate the meaning of this equality. McMahan contends (see page 25) that the argument about equality serves only to provide excuses for the bad guys, the ones fighting an unjust war. These may be good excuses (they would have to be examined in each individual case to know that), but they don't justify what the bad guys are doing. They only mitigate their guilt or their responsibility for doing it. So consider a case where justification was impossible but excuses really mattered and were taken seriously: The trials of Dutch collaborators after the Second World War. There were thousands of these trials, and in each, mitigating circumstances were taken into account; each collaborator was treated as an individual – and this was surely the right thing to do. So why didn't we do anything similar, or even think of doing anything similar, with regard to German soldiers who fought, say, in Russia (or anywhere else), or with Italian soldiers who fought in Ethiopia or Albania or Greece? In contrast to the Dutch collaborators, who had individual excuses, we took these soldiers to have a collective excuse. In fact, I don't think that "excuse" is the right word here; I only want to insist that even in McMahan's usage, the soldiers' excuse functions differently than excuses normally do, because of the circumstances of war. It doesn't require or even invite the same kind of individual examination. Why not?

The Dutch collaborators were breaking with their own people, breaking solidarity, choosing the Nazis instead. This was a bad choice, and they were compelled to explain themselves, one by one. The soldiers in all the other cases were doing the done thing, what everybody else was doing, what their parents and friends, teachers and pastors, and the leaders of their country, insisted was the right thing to do – and so in fact we didn't compel them to explain themselves, one by one. Once again, we collectivized their legal and moral status. In fact, we treated them very much like McMahan would have treated the conscripts in Saddam Hussein's army. But I don't think that conscription makes the difference or, better, we have to recognize that there are many ways, not only legally coercive ways, in which young people are conscripted into the army of their country.

Finally, I need to say something about the civilian collective. McMahan argues that it isn't a collective and that the responsibility of civilians differs just as the responsibility of soldiers differs, from case to case. But, again, we need to ask what difference the differences make. Since he doesn't believe that civilians who voted for the government that is fighting the unjust war can be killed, he is going to have the same view of, say, bombing urban residential areas that "traditional" theorists have. Maybe if we invented a bomb that killed only adult war-mongers, some "traditional" theorists might change their minds about bombing residential areas. But military technology isn't adapted to that kind of individualizing perspective; it is instead a key instrument in the tyranny of war. Because of that tyranny, McMahan also isn't going to allow the terrorist bomb on the bus or in the café. I read him, instead, as endorsing targeted killing. Now, the "traditional" view of targeted killing is that it's much better than random or indiscriminate killing. Beyond that, we have to argue about each target: What are the grounds for pulling this particular person out of the civilian collective? I think that I would require a much stronger case than McMahan would; he seems inclined to be permissive, but I may misread him here. It would be nice to look at some examples.

I don't think that the effort to tell the moral story of war and warfare in terms of individual responsibility is going to work – that is, it's not going to do any work on the ground. The story can be told, but I don't see how it impacts on the actual course of the battles (or, for that matter, on the aftermath of the battles). McMahan seems finally to accept this view. He claims at the end of his essay that war is governed by two sets of principles: One is the "deep morality of war," and the other is the war convention, which is reflected in the "traditional" theory. At this point, our disagreement seems minimal. I believe that McMahan's "deep morality" is simply our ordinary morality, and that the conventions represent the adaptation of this morality to the circumstances of war. Now we might argue about whether ordinary morality provides a critical standard for the war convention. Of course, it does. But we can't apply the standard without attending far more closely than McMahan seems prepared to do to the moral reality of war.